



6351-01-P

## **COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Parts 1, 15, 17, 19, 32, 37, 38, 140, and 150**

**RIN 3038-AD99; 3038-AD82**

### **Position Limits for Derivatives and Aggregation of Positions**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking; reopening of comment periods.

**SUMMARY:** On December 12, 2013, the Commodity Futures Trading Commission (“Commission”) published in the Federal Register a notice of proposed rulemaking (the “Position Limits Proposal”) to establish speculative position limits for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts. On November 15, 2013, the Commission published in the Federal Register a notice of proposed rulemaking (the “Aggregation Proposal”) to amend existing regulations setting out the Commission’s policy for aggregation under its position limits regime. The Commission’s Agricultural Advisory Committee has scheduled a public meeting to be held on December 9, 2014, which will consider, among other matters, deliverable supply and exemptions for bona fide hedging positions. To provide commenters with a sufficient period of time to respond to questions raised and points made at the Agricultural Advisory Committee meeting, the Commission is reopening the comment periods for an additional 45 days. Comments should be limited to the following issues as they pertain to agricultural commodities: hedges of a physical commodity by a commercial enterprise; and the process for estimating deliverable supplies used in the setting of spot month limits.

**DATES:** The comment periods for the Aggregation Proposal published November 15, 2013, at 78 FR 68946, and for the Position Limits Proposal published December 12, 2013, at 78 FR 75680, will reopen on December 9, 2014, and close on January 22, 2015.

**ADDRESSES:** You may submit comments, identified by RIN 3038–AD99 for the Position Limits Proposal or RIN 3038–AD82 for the Aggregation Proposal, by any of the following methods:

- Agency Web site: <http://comments.cftc.gov>;
- Mail: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581;
- Hand Delivery/Courier: Same as Mail, above; or
- Federal eRulemaking Portal: [http:// www.regulations.gov](http://www.regulations.gov). Follow instructions for submitting comments.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to [http:// www.cftc.gov](http://www.cftc.gov). You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted under § 145.9 of the Commission’s regulations (17 CFR 145.9).

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene

language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Stephen Sherrod, Senior Economist, Division of Market Oversight, (202) 418–5452, [ssherrod@cftc.gov](mailto:ssherrod@cftc.gov); or Riva Spear Adriance, Senior Special Counsel, Division of Market Oversight, (202) 418–5494, [radriance@cftc.gov](mailto:radriance@cftc.gov); Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Commission has long established and enforced speculative position limits for futures and options contracts on various agricultural commodities as authorized by the Commodity Exchange Act (“CEA”).<sup>1</sup> The part 150 position limits regime<sup>2</sup> generally includes three components: (1) the level of the limits, which set a threshold that restricts the number of speculative positions that a person may hold in the spot-month, individual month, and all months combined,<sup>3</sup> (2) exemptions for positions that constitute bona fide hedging transactions and certain other types of transactions,<sup>4</sup> and (3) rules to determine which accounts and positions a person must aggregate for the purpose of determining compliance with the position limit levels.<sup>5</sup> The Position Limits Proposal generally sets

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<sup>1</sup> 7 U.S.C. 1 *et seq.*

<sup>2</sup> See 17 CFR part 150. Part 150 of the Commission’s regulations establishes federal position limits on futures and option contracts in nine enumerated agricultural commodities.

<sup>3</sup> See 17 CFR 150.2.

<sup>4</sup> See 17 CFR 150.3.

<sup>5</sup> See 17 CFR 150.4.

out proposed changes to the first and second components of the position limits regime and would establish speculative position limits for 28 exempt and agricultural commodity futures and option contracts, and physical commodity swaps that are “economically equivalent” to such contracts (as such term is used in CEA section 4a(a)(5)).<sup>6</sup> The Aggregation Proposal generally sets out proposed changes to the third component of the position limits regime.<sup>7</sup>

The Commission published the Position Limits Proposal and the Aggregation Proposal separately because it believes that the proposed amendments regarding aggregation of positions could be appropriate regardless of whether the Position Limits Proposal is finalized.<sup>8</sup> If the Aggregation Proposal is finalized first, the modifications would apply to the current position limits regime for futures and option contracts on nine enumerated agricultural commodities. If the Position Limits Proposal is subsequently finalized, the modifications in the Aggregation Proposal would apply to the position limits regime for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts.

In order to provide interested parties with an opportunity to comment on the Aggregation Proposal during the comment period on the Position Limits Proposal, the Commission extended the comment period for the Aggregation Proposal to February 10, 2014, the same end date as the comment period for the Position Limits Proposal.<sup>9</sup>

Subsequent to publication of the Position Limits Proposal and the Aggregation Proposal, the Commission directed staff to schedule a June 19, 2014, public roundtable to

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<sup>6</sup> See Position Limits for Derivatives, 78 FR 75680 (Dec. 12, 2013).

<sup>7</sup> See Aggregation of Positions, 78 FR 68946 (Nov. 15, 2013).

<sup>8</sup> See Aggregation Proposal, 78 FR at 68947.

<sup>9</sup> See 79 FR 2394 (Jan. 14, 2014).

consider certain issues regarding position limits for physical commodity derivatives. The roundtable focused on hedges of a physical commodity by a commercial enterprise, including gross hedging, cross-commodity hedging, anticipatory hedging, and the process for obtaining a non-enumerated exemption. Discussion included the setting of spot month limits in physical-delivery and cash-settled contracts and a conditional spot-month limit exemption. Further, the roundtable included discussion of: the aggregation exemption for certain ownership interests of greater than 50 percent in an owned entity; and aggregation based on substantially identical trading strategies. As well, the Commission invited comment on whether to provide parity for wheat contracts in non-spot month limits. In conjunction with the roundtable, staff questions regarding these topics were posted on the Commission's website.

To provide commenters with a sufficient period of time to respond to questions raised and points made at the roundtable, the Commission published a notice in the Federal Register on May 29, 2014, reopening the comment periods for the Position Limit Proposal and the Aggregation Proposal for three weeks, from June 12, 2014 to July 3, 2014. The Commission published notice in the Federal Register on July 3, 2014, further extending the comment periods to August 4, 2014.

Comment letters received on the Position Limits Proposal are available at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1436>. Comment letters received on the Aggregation Proposal are available at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1427>.

## **II. Reopening of Comment Period**

The Commission's Agricultural Advisory Committee has scheduled a meeting to be held on December 9, 2014, and adopted an agenda that includes consideration, among other matters, of two issues associated with the Position Limits rulemaking: deliverable supply and exemptions for bona fide hedging positions. To provide interested persons with a sufficient period of time to respond to questions raised and points made at the Agricultural Advisory Committee meeting, the Commission is reopening both the Position Limit Proposal and the Aggregation Proposal for an additional 45-day comment period. Comments should be limited to the following issues as they pertain to agricultural commodities: hedges of a physical commodity by a commercial enterprise; and the process for estimating deliverable supplies used in the setting of spot month limits, as each pertains to agricultural commodities.

Both comment periods will reopen on December 9, 2014, and close on January 22, 2015.

Issued in Washington, DC, on December 1, 2014, by the Commission.

Christopher J. Kirkpatrick,  
Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

**Appendices to Position Limits for Derivatives and Aggregation of Positions**

**Reopening of Comment Periods – Commission Voting Summary and**

**Commissioner’s Statement**

**Appendix 1 – Commission Voting Summary**

On this matter, Chairman Massad and Commissioners Wetjen, Bowen, and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

**Appendix 2 – Statement of Commissioner Sharon Y. Bowen**

I support this reopening of the comment period for our position limits rule. As I’ve previously said, this is a key rule and we are well-served by giving stakeholders another chance to comment.

However, we cannot allow this rule to linger indefinitely on our docket. It has been over a year since we re-proposed this rule and nearly four years since it was first proposed. We need to finish this rule next year, and I believe we can release a final rule by spring 2015.

As we continue to finalize and fine-tune our Dodd-Frank rulemakings, we have to avoid the temptation to simply ratchet back or weaken prior versions of those rules. In fact, I think the best way of viewing changes to our rules is not that we are tweaking them, but rather that we are enhancing them. Sometimes that may mean making the rules more cost-effective and leaner, but at other times that will mean making them stronger than before. Enhancing a rule can mean reducing burdens to business while strengthening protections for the public. I believe our position limits proposal is exactly

the sort of rule that needs to be enhanced, and I look forward to working with my fellow Commissioners to finish and release this rule in a timely fashion.

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